



April 3, 2000

Mr. K. Scott Oliver  
Office of the Criminal District Attorney  
County of Bexar  
Bexar County Justice Center  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2000-1282

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133757.

Bexar County (the “county”) received a request for all police department reports related to a particular criminal incident, including the accident report, field notes, field sobriety test notes, and intoxilyzer test results. You state that you have provided all but the intoxilyzer test results and one other item of the requested information, which you claim are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information submitted as Exhibits B and C.

We first address your claim that Exhibit B should be withheld from disclosure because it contains criminal history record information (“CHRI”) that is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 protects information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We agree that the county must withhold all CHRI obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may

not be made available to the requestor except in accordance with federal regulations. Further, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by subchapter F of chapter 411 of the Government Code. Therefore, any criminal history record information obtained from the NCIC or the TCIC must be withheld pursuant to section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Exhibit C consists of results of intoxilyzer test results. You claim that these are excepted from required disclosure by section 552.101 in conjunction with section 724.018 of the Transportation Code. Section 724.018 provides that "a person who has given a specimen at the request of a peace officer" may obtain on request "full information concerning the analysis of the specimen." Where a statute provides an individual with a special right of access to information, that information may not be withheld from that individual. *See* Open Records Decision Nos. 613 (1993), 623 (1994). Here, however, the requestor is not the subject of the test report. You argue that because the legislature did not specifically provide access to the test results to anyone other than the person providing the specimen or that person's attorney, the legislature by negative implication intended for the information to be confidential as to any other requestor. You are concerned, then, that release of the test results to a third party would be a violation of either section 724.018 or a common law privacy interest.

In Open Records Decision No. 478 (1987), this office made a determination on the same argument in the same context. You distinguish that decision from the instant situation by pointing out that that decision was promulgated prior to the enactment of section 724.018. However, section 724.018 was a nonsubstantive codification of its predecessor statute, section 3(e) of article 6701i-5 of Vernon's Texas Civil Statutes. In Open Records Decision No. 478 (1987), this office interpreted the predecessor statute as creating a special right of access for the person supplying the specimen; we concluded that the statute did not constitute a grant of confidentiality with regard to other persons. *Id.* at 2-3. *See also* Open Records Decision Nos. 658 (1998) (statutory confidentiality provision must be express), 465 (1987) (confidentiality requirement not to be implied from statutory structure). Therefore, you may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 724.018 of the Transportation Code.

Section 552.101 of the Government Code also applies to information made confidential by the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with the common law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). In Open Records Decision No. 478 (1987), we held that:

[t]he fact that a person has submitted to an intoxilyzer test at the request of a public safety officer may meet the first part of the test because it may be highly intimate and embarrassing. On the other hand, it is of legitimate public interest that a driver on public roads may have been driving while under the influence of alcohol or other intoxicants.

Open Records Decision No. 478 at 3-4 (1987). In this instance, we find that there is a legitimate public interest in disclosure of the information; therefore, it may not be withheld under section 552.101. In summary, the county must withhold all CHRI obtained from NCIC or TCIC, but must release the intoxilyzer test results.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia Michels Anderson".

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/ljp

Ref: ID# 133757

Encl. Submitted documents

cc: Mr. Mark Macias  
White & Davis  
5707 IH-10 West, Suite 205  
San Antonio, Texas 78201  
(w/o enclosures)